



To: Chief Elected Officials
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Date: December 1, 2004

Subj.: DWD Policy 2004-16
Sectarian/Religious Activity Policy

An Equal Opportunity Employer

RE: Workforce Investment Act (WIA)

Purpose

To provide guidance concerning faith-based and sectarian/religious organizations and activity under the Workforce Investment Act (WIA.)

Rescission

DWD Communication 97-27: Sectarian/Religious Activity Policy, dated March 13, 1998.

Content

Effective July 12, 2004, WIA Final Regulations have been revised with regard to the possible role of sectarian/religious organizations as service providers. In essence, the new regulations mean that:

- All social service organizations are potentially eligible to become WIA service providers even though no public money may be directed by government entities or contractors to sectarian/religious purposes and
- The First Amendment rights of sectarian/religious organizations will not be compromised or infringed.

The new regulations reflect a desire to:

- Provide the criteria by which sectarian/religious organizations may be eligible as service providers and/or training facilities,
- Prevent direct use of public money for sectarian/religious purposes, and
- Protect faith-based and sectarian/religious organizations from discrimination.

The need to balance the above factors while also allowing for participant choice is met by the federally established distinction between 'direct funding' and 'indirect funding.' [20 CFR 667.275] In essence, this means that:

- Direct Department of Labor (DOL) support may not be used for inherently religious activities such as worship services or prayer meetings.

- Service providers receiving direct DOL support may offer inherently religious activities such as worship services or prayer meetings only when they are separated in time or location from government funded activities.
- Participation of WIA enrollees in inherently religious activities must be entirely voluntary.
- These restrictions do not apply when DOL support is received indirectly, such as by means of an Individual Training Account (ITA).

Section 188(a)(3) of the Workforce Investment Act indicates:

“Prohibition on Assistance for Facilities for Sectarian Instruction or Religious Worship -- Participants shall not be employed under this title to carry out the construction, operation, or maintenance of any part of any facility that is used or to be used for sectarian instruction or as a place for religious worship (except with respect to the maintenance of a facility that is not primarily or inherently devoted to sectarian instruction or religious worship, in a case in which the organization operating the facility is part of a program or activity providing services to participants).”

20 CFR Part 667.266 of the Final Regulations indicates:

- (a) Limitations related to sectarian activities are set forth at WIA Section 188(a)(3) and 29 CFR 37.6(f).
- (b) Under these limitations:
 1. 29 CFR part 2, subpart D governs the circumstances under which DOL support, including WIA Title I financial assistance, may be used to employ or train participants in religious activities. Under that subpart, such assistance may be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect. See also 20 CFR 667.275 and 29 CFR 37.6(f)(1). 29 CFR part 2, subpart D also contains requirements related to equal treatment in Department of Labor programs for religious organizations, and to protecting the religious liberty of Department of Labor social service providers and beneficiaries.
 2. Limitations on the employment of participants under WIA Title I to carry out the construction, operation, or maintenance of any part of any facility used or to be used for religious instruction or as a place for religious worship are described at 29 CFR 37.6(f)(2).

20 CFR Part 667.275 of the Final Regulations indicates:

- (b) 29 CFR part 2, subpart D governs the circumstances under which recipients may use DOL support, including WIA Title I financial assistance, to employ or train participants in religious activities. Under that subpart, such assistance may

be used for such employment or training only when the assistance is provided indirectly within the meaning of the Establishment Clause of the U.S. Constitution, and not when the assistance is provided directly. As explained in that subpart, assistance provided through an Individual Training Account is generally considered indirect, and other mechanisms may also be considered indirect.

The issue of sectarian/religious activity within WIA training programs usually arises as a result of:

- Sectarian/religious organizations serving as service providers and/or training facilities;
- Differences in funding guidelines between directly supported and indirectly supported WIA activities;
- Participants attending sectarian/religious training institutions; and/or
- Participants using sectarian/religious day care facilities.

With this policy, the Department of Workforce Development here provides policy guidance concerning sectarian/religious activities in the following four situations:

- Sectarian/religious organizations serving as service providers and/or training facilities;
- Differences between direct and indirect funding of WIA activities;
- Participants attending sectarian/religious training institutions; and
- Participants using sectarian/religious day care facilities for childcare.

I. Sectarian/Religious Organizations Serving as Service Providers and/or Training Facilities

WIA allows for the use of facilities owned and/or operated by sectarian/religious organizations as service providers and/or training facilities for non-sectarian/religious training activities. The Department of Workforce Development (DWD) recognizes the importance of these sites as one means to serve and train participants. The procedures and standards by which a sectarian/religious organization qualifies to be a service provider may not differ significantly from those a WIB specifies for a non-sectarian organization. The following are questions that may arise as a result of this situation and DWD's responses to these concerns.

- > *What is the definition of a sectarian/religious organization and when can a sectarian/religious organization be used as a service provider and/or training facility?*

The term "sectarian/religious organizations" refers to any organization that provides a framework for worship or that has an established theological or spiritual purpose or perspective. A sectarian/religious organization may be used as a service provider and/or training facility if there is a division between "church and State." In other words, there is to be a clear and obvious separation either physically or chronologically between any directly funded WIA participant activities on-site and the organization's sectarian/religious activities. (The issue of indirectly funded activities is addressed below.)

In addition, separate facilities, operated by a sectarian/religious organization, which are not of a sectarian/religious nature (such as a hospital) and which do not discriminate on the basis of religion (or other means) when providing services, are allowable training sites. For example, the purpose of a hospital is to provide medical care. In most cases, the sectarian/religious activities are clearly defined and limited to the chapel area. The hospital can easily be divided into religious and non-religious areas. The division is easily identified and will remain as identified. There is a clear separation of church from State.

> *How is the division between “church and State” documented?*

A site owned by a sectarian/religious organization can only be used as a training facility if the location is neither primarily for sectarian/religious purposes nor used for any such activities during the hours of WIA program activity. (29 CFR 37.6(f)(2)) No greater documentation may be required of the separation of sectarian/religious activities from WIA activities than is required of non-sectarian organizations to document any other separations. [CFR, July 12, 2004, p. 41883.]

> *Must a sectarian/religious organization alter or disguise its physical appearance in anyway to be eligible as a service provider and/or training facility?*

No. It is not necessary for a sectarian/religious organization to remove or alter its religious art, icons, scriptures, sculptures, or other spiritual symbols or objects in order to be used as a WIA service provider and/or training facility.

> *What if the sectarian/religious organization charges fees for (some of) its services? Is the site still eligible to be a training site?*

The organization may not profit from the WIA activity in which the participants are involved. If any fees are charged WIA participants for childcare, for example, they may be no more than sufficient to cover costs. Also, the facility may not be additionally rented to other organizations during the hours of WIA program activity.

> *May WIA participants at training sites in sectarian/religious facilities perform janitorial/ maintenance work?*

Any maintenance performed by WIA participants on training facilities may only be to clean up or repair the site from WIA activity. Participants are not allowed to paint the facility or perform other maintenance that would “up-grade” it.

> *May WIA participants perform the tasks normally done by employees at the sectarian/religious facility as part of their assignment?*

WIA participants may not replace employees, perform sectarian tasks, nor any that would enable facility employees to perform additional sectarian activities themselves. WIA participants may perform nonsectarian tasks that enable facility employees to perform additional nonsectarian activities if participant tasks may reasonably be expected to contribute to their job placement or retention.

> *How do these regulations apply to any voluntary staff or mentors at the sectarian/religious organization?*

Every entity receiving WIA funding is responsible for the actions of anyone acting for it, whether that person is a paid employee or a volunteer. In other words, an unpaid volunteer is not to act in anyway prohibited to a paid employee. The same restrictions apply to both.

> *Must participants be of the same faith as the sectarian/religious organization?*

No. Matching of WIA participants for the service or training program must be done without regard to religious belief. Also, the sectarian/religious organization must provide its services on a non-discriminatory basis, in order to be eligible for WIA, whether the activity is funded directly or indirectly.

For example, a non-profit day care center operated at a sectarian/religious school may be used as a training facility for youth during the summer months. The location is allowable for directly funded WIA activities, if the following conditions are met:

- The site is used when no school is in session and a signed statement from the school is on file with the service provider or WIB. Also, the signed statement from the school indicates that no sectarian/ religious activities will occur there during the hours of WIA program activity.
- Any maintenance duties performed by WIA participants are only to clean up or repair from WIA activity. Participants would not be allowed to paint the facility or perform other maintenance that would be considered “up-grading” it.
- The provision of childcare services is on a non-discriminatory basis and no sectarian/religious activities may occur during the WIA service provision.
- The sectarian/religious organization may not profit from WIA money. In other words, the use of the childcare facility for WIA activities may not financially benefit the sectarian/religious organization beyond the fees or rent sufficient to cover the costs of operation.

II. Differences between Direct and Indirect Funding of WIA Activities

Direct funding or direct support occurs when a governmental entity or WIB obtains needed services by means of contract, grant, cooperative agreement, or other similar and legally binding funding device. Indirect funding occurs when a WIA participant is the one who determines where and how WIA funding shall be expended by use of an Individual Training Account or a claim voucher tied to the participant’s voluntary choice.

(It should be emphasized that in this context, the terms ‘direct funding’ and ‘indirect funding’ do not pertain to cost allocation plans but to the monetary means by which services are provided to WIA participants.)

III. Participants attending Sectarian/Religious Training Institutions

Participants may attend sectarian/religious institutions. However, WIA funds can not be directly used to pay for specifically religious/sectarian classes. Individual Training Accounts (ITAs) or vouchers, because indirect, are the appropriate mechanisms for participants desiring sectarian training classes. [20 CFR 667.275] A signed paper must be on file with the case notes to establish the voluntary nature of the WIA client's choice to attend religious/sectarian classes.

Unlike the situation with directly funded WIA activities, there is no need to separate an organization's sectarian/religious activities physically or chronologically from voluntary, ITA funded WIA activities.

IV. Participants using Sectarian/Religious Day Care Facilities for Childcare

If selected for use by a WIA participant, a sectarian/religious childcare facility may provide childcare for the participant's child. As such, the sectarian/religious childcare facility may be reimbursed with WIA funding for the supportive service provided.

Effective Date

December 1, 2004

Ending Date

October 15, 2006

Ownership

WIA Administration

Action

Local administrators are to ensure the guidance contained in this policy is implemented.

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